

## STATEMENT OF CONSIDERATION RELATING TO

805 KAR 1:170  
Amended After Comments

Energy and Environment Cabinet  
Department for Natural Resources  
Division of Oil and Gas

**I** The public hearing on 805 KAR 1:170 scheduled for May 26, 2015 at 10:00 am was canceled. However, written comments were received during the public comment period.

**II** The following person submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Andrew McNeill, Executive Director	Kentucky Oil and Gas Association
Emily Harkenrider, Legislative Analyst	Legislative Research Commission

**III** The following people from the promulgating administrative body responded to the written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Steve Hohmann, Commissioner	Department for Natural Resources
Kim Collings, Director	Division of Oil and Gas
Marvin Combs, Asst. Director	Division of Oil and Gas
Michael Mullins, Regulation Coordinator	Department for Natural Resources
Lance Huffman, Attorney	Office of General Counsel

#### IV Summary of Comments and Responses

**(1) Subject Matter: Approved Seed Mixes**

**(a) Comment: Andrew McNeill, Kentucky Oil and Gas Association.**

**Section 2(2)(b) – p. 2 lines 16-18:** The proposed rule includes new language referencing “approved seed mixes.” KOGA understands and supports the rationale for adopting recommended seed mixtures for revegetation. KOGA believes any final list of “approved seed mixes” must include KY 31 Tall Fescue. The majority of a well pad’s initial surface disturbance will be utilized by the well, storage tanks and other production equipment. The areas requiring revegetation will be the slopes on the well pad periphery and the slopes along the access road. Slope stabilization and sediment control require aggressive root grasses. KY 31 Tall Fescue meets this practical requirement in a cost effective manner. Furthermore, it is important to point out that KY 31 Tall Fescue is an approved seed mix within the Kentucky Division of Abandoned Mine Land’s *Technical Specifications* manual, Appendix A. KOGA recommends KY 31 Tall Fescue be included within well site reclamation “approved seed mixes.”

**(b) Response:** The department agrees with commenter and will make the appropriate changes to the administrative regulation.

**(2) Subject Matter: Defined Timeline for Review**

**(a) Comment: Andrew McNeill, Kentucky Oil and Gas Association.**

Review and approval of the operations and reclamation plan is now a condition that must be met prior to a permit being issued. As currently contemplated, it is an open-ended process. KOGA recommends a clearly defined timeline for review and approval of the operations and reclamation plan.

**(b) Response:** The department does not agree with this comment. Some operations and reclamations plans will take longer to review and may pose unique issues that may require a longer review time than others. Therefore, the department does not intend to amend the regulation in response to this comment.

**(3) Subject Matter: Best Management Practices**

**(a) Comment: Andrew McNeill, Kentucky Oil and Gas Association.**

There are numerous references to “Best Management Practices.” What qualifies as “Best Management Practices” is unclear. KOGA recommends the Department and Division further clarify this requirement through an update of the Oil and Gas Operator’s Manual.

**(b) Response:** The department agrees with this comment and intends to update the Oil and Gas Operator’s Manual to include additional clarity on best management practices.

- (4) **Subject Matter: Final Inspection of Reclamation**
- (a) **Comment: Andrew McNeill, Kentucky Oil and Gas Association.**  
**Section 6(1)(c) – p. 9 lines 6-8:** KOGA recommends striking “cabinet” at the end of line 8 and replacing it with “Department.” Further, it is unclear whether this requirement contemplates an inspection and approval by the Department after notification that reclamation has been completed or whether the Department’s initial approval of the operations and reclamation plan is all that is required. KOGA recommends additional clarity on these points.
- (b) **Response:** The department agrees with replacing “cabinet” with “department”. However, another comment removes the phrase. The administrative regulation is drafted to require the department to perform an inspection to verify the reclamation has been completed.
- (5) **Subject Matter: Codified Version of SB 186.**
- (a) **Comment: Andrew McNeill, Kentucky Oil and Gas Association.**  
Where applicable, KOGA recommends the Department use the newly codified version of SB 186 within the final proposed regulations.
- (b) **Response:** The department agrees with commenter and will make the appropriate changes to the administrative regulation.
- (6) **Subject Matter: Technical Amendments**
- (a) **Comment: Emily Harkenrider, Legislative Research Commission.**  
LRC staff made several comments to ensure compliance with KRS 13A.
- (b) **Response:** The department agrees with the commenter and will make the appropriate changes to the administrative regulation.

**V. Summary of Statement of Consideration and Action Taken by Promulgating Administrative Body**

**805 KAR 1:170. Content of the operations and reclamation plan.** Comments were considered and the following changes are suggested:

**Page 1**

**RELATES TO**

**Line 7**

After "KRS", insert the following:

353.180, 353.510, 353.520, 353.561 – 353.564, 353.590,  
353.5901, 353.592, 353.595, 353.597, 353.651,  
353.652, 353.6601 – 353.6606, 353.730, 353.737, 353.991

Delete the remainder of the RELATES TO paragraph in its entirety.

**Page 1**

**NECESSITY, FUNCTION, AND CONFORMITY**

**Lines 12 and 13**

After "This administrative regulation", insert "establishes".

Delete "specifies".

**Line 13**

After "and reclamation plan,", insert "establishes".

Delete "creates".

**Line 14**

After "be filed, and", insert "establishes".

Delete "provides".

**Page 1**

**Section 1**

**Lines 15 and 16**

After "Section 1. Definitions.", delete the following:

In addition to those set out in KRS 353.510, the following  
definitions shall apply to this administrative regulation:

**Page 1**

**Section 1(1)**

**Line 17**

After "defined by KRS", insert "353.510(28)".

Delete "353.5901".

**Pages 1 and 2**

**Section 1(2) through (5)**

**Lines 18 through 21 and 1 through 4**

After "(2)" delete the remainder of subsection (2), delete subsections (3) and (4) in their entirety, and delete the notation, "(5)".

**Page 2**

**Section 1(5)**

**Line 4**

After "operator has completed", delete "his".

**Line 5**

After "plugged the well", insert a comma.

**Page 2**

**Section 1(5) and (6)**

**Lines 6 and 7**

After "and reclamation plan.", insert "(3)".

Delete "(6)".

**Page 2**

**Section 2(1)**

**Line 9**

After "be filed on", insert "Operations and Reclamation Plan.

**Lines 9 and 10**

After "Form ED-10", delete the following:  
, entitled "Operations and Reclamation Plan"

**Page 2**

**Section 2(2)(a)**

**Line 14**

After "and surface owner's", insert "": 1.".

Capitalize the first letter of "names".

After ", addresses", insert a comma.

After "and telephone numbers", insert "": 2.".

Delete ", the".

Capitalize the first letter of "county".

**Line 15**

After "to be drilled", insert "": and 3.".

Delete ", and the".

Capitalize the first letter of "well".

**Page 2**

**Section 2(2)(b)**

**Line 16**

After "(b)", insert "1.".

After "soil amendments and", delete "approved".

**Line 17**

After "to be planted", insert the following:  
as established in the table in this subparagraph.

<u>RECOMMENDED HERBACEOUS MIXTURES</u> <u>FOR REVEGETATION</u>	
Note: A species enclosed in parenthesis may be substituted for the species to the left. Its seeding rate is enclosed in parentheses.	
<u>Species Mixture</u>	<u>Seeding Rate</u> <u>(Pounds/acre</u> <u>PLS)</u>
<u>Spring - February 15 to May 15</u>	
<u>1. Orchardgrass</u>	<u>10</u>
<u>White or Ladino clover</u>	<u>2</u>
<u>Red clover</u>	<u>6</u>
<u>2. Orchardgrass</u>	<u>10</u>
<u>White or Ladino clover</u>	<u>1</u>
<u>Red clover</u>	<u>4</u>
<u>Kobe lespedeza</u>	<u>10</u>
<u>3. Orchardgrass</u>	<u>10</u>
<u>Birdsfoot trefoil (Alfalfa)</u>	<u>8 (15)</u>
<u>Red clover</u>	<u>6</u>
<u>4. 31 Tall fescue</u>	<u>20</u>
<u>5. Wheat (Spring oats)</u>	<u>25 (32)</u>
<u>Switchgrass</u>	<u>10</u>
<u>Indiangrass</u>	<u>10</u>
<u>Big bluestem</u>	<u>5</u>
<u>Little bluestem</u>	<u>5</u>
<u>Birdsfoot trefoil</u>	<u>6</u>
Except for mixture 5, add one (1) of the following quick cover species to the selected permanent spring seeding mixture:	
<u>Wheat (before April 15)</u>	<u>30</u>
<u>Spring oats (before April 15)</u>	<u>32</u>
<u>Balbo rye (before April 15)</u>	<u>30</u>
<u>Perennial ryegrass</u>	<u>10</u>
<u>Annual ryegrass</u>	<u>5</u>
<u>Weeping lovegrass (after April 1)</u>	<u>2</u>
<u>Summer - May 15 to August 1</u>	
<u>Orchardgrass</u>	<u>10</u>
<u>Kobe lespedeza</u>	<u>15</u>
<u>Red clover</u>	<u>4</u>
<u>White clover (Birdsfoot trefoil)</u>	<u>1 (6)</u>
<u>Alfalfa</u>	<u>12</u>
Add one (1) of the following quick cover species to the permanent summer seeding mixture:	
<u>Sorghum</u>	<u>20</u>
<u>Foxtail (German) millet</u>	<u>12</u>
<u>Japanese millet</u>	<u>15</u>

<u>Soybeans</u>	<u>40</u>
<u>Cowpeas</u>	<u>40</u>
<u>Pearl millet</u>	<u>10</u>
<u>31 Tall fescue</u>	<u>20</u>
<u>Fall - August 1 to October 1</u>	
<u>1. Orchardgrass</u>	<u>10</u>
<u>White or Ladino clover</u>	<u>2</u>
<u>Red clover</u>	<u>6</u>
<u>2. Orchardgrass</u>	<u>10</u>
<u>Alfalfa (Birdsfoot trefoil)</u>	<u>15 (8)</u>
<u>Red clover</u>	<u>6</u>
<u>3. 31 Tall fescue</u>	<u>20</u>
<u>4. Deertongue</u>	<u>12</u>
<u>Birdsfoot trefoil</u>	<u>8</u>
<u>Red clover</u>	<u>6</u>
<u>Add one (1) of the following quick cover species to the selected permanent fall seeding mixture:</u>	
<u>Winter wheat</u>	<u>30</u>
<u>Balbo rye or Winter rye</u>	<u>30</u>
<u>Winter oats</u>	<u>32</u>
<u>Perennial ryegrass</u>	<u>10</u>
<u>Annual ryegrass</u>	<u>5</u>
<u>Mixtures for Wet or Poorly Drained Areas and Pond Borders</u>	
<u>Spring - February 15 to May 15</u>	
<u>Japanese millet</u>	<u>10</u>
<u>Redtop (Reed canarygrass)</u>	<u>3 (15)</u>
<u>Alsike clover</u>	<u>4</u>
<u>31 Tall fescue</u>	<u>20</u>
<u>Common annual lespedeza (quick cover species)</u>	<u>10</u>
<u>Fall - August 1 to October 1</u>	
<u>Redtop</u>	<u>3</u>
<u>Reed canarygrass</u>	<u>15</u>
<u>Alsike clover</u>	<u>6</u>
<u>31 Tall fescue</u>	<u>20</u>
<u>Common annual lespedeza (quick cover species)</u>	<u>10</u>
<u>Mixture for Areas to be Stocked With Woody Plants</u>	
<u>Spring or Fall Seeding</u>	
<u>Redtop</u>	<u>3</u>
<u>Perennial ryegrass</u>	<u>5</u>
<u>Birdsfoot trefoil (Appalow lespedeza)</u>	<u>10 (20)</u>
<u>Foxtail millet (quick cover)</u>	<u>5</u>

species)	
If both Appalow lespedeza and birdsfoot trefoil are used, cut their seeding rates in half.	

2. The requirements in subparagraph 1. of this paragraph shall apply

**Lines 17 and 18**

After "requiring revegetation treatment", delete the following:  
and the types and amounts per acre of seed and trees to be planted

**Page 2**

**Section 2(2)(c)**

**Line 19**

After "road, well location", insert a comma.

**Line 21**

After "satisfy the", delete "following".

After "requirements", insert the following:

established in subparagraphs 1. through 4. of this paragraph.

Delete the colon.

**Page 3**

**Section 2(2)(c)1.**

**Line 1**

After "1.", insert "a.".

**Line 2**

After "on the legend", insert "b. The".

Delete ", which".

After "map shall", delete "also".

**Line 3**

After "to be disturbed", insert a period.

Delete the semicolon.

**Page 3**

**Section 2(2)(c)2.**

**Lines 5 and 6**

After "and shall be", insert ": a.".

Capitalize the first letter of "enlarged".

**Line 6**

After "to 1"=400\"", insert "; and b.".

Delete "and be".

Capitalize the first letter of "submitted".

**Line 7**

After "using the symbols", insert "established".

Delete "set out".

After "on Form ED-10", insert a period.



Delete the semicolon.

**Page 3**

**Section 2(2)(c)3.c.**

**Line 14**

After "c.", insert "If".

Delete "When".

**Page 4**

**Section 2(3)**

**Lines 3 and 4**

After "on Form ED-10", insert the following:

pursuant to paragraphs (a) and (b) of this subsection.

Delete "in the following manner:".

**Page 4**

**Section 2(3)(a)**

**Line 5**

After "indicated and his", insert "or her".

**Lines 5 and 6**

After "signature notarized", insert ". 1.a. The".

Delete ", which".

**Line 6**

After "company or of", insert "a".

Delete "some other".

**Line 7**

After "to execute documents", insert ". b.".

Delete the comma.

Capitalize "a".

After "copy of", insert "the".

Delete "which".

**Line 8**

After "with the division.", insert "2.".

**Lines 9 and 10**

After "as the applicant's", insert the following:

. If someone other than the applicant signs the form, the signatory shall hold a duly recorded power of attorney.

Delete the remainder of paragraph (a) in its entirety.

**Page 4**

**Section 2(3)(b)**

**Line 11**

After "indicated and his", insert "or her".

After "notarized if he", insert "or she".

**Page 4**

**Section 3**

**Line 14**

After "has failed to", insert "submit".

Delete "execute".

**Line 15**

After "shall file", insert ":(1)".

Capitalize "a".

**Page 4**

**Sections 3 and 3(1)**

**Lines 15 and 16**

After "petition for mediation", insert the following:

; and

(2) With the items established in paragraphs (a) and (b) of this subsection.

(a)

Delete the following:

, together with the following, at the time the application for permit is filed, in accordance with KRS 353.5901:

(1)

**Page 4**

**Section 3(1) and (2)**

**Lines 21 and 22**

After "also be included.", insert "(b)".

Delete "(2)".

**Page 5**

**Section 3(2)**

**Line 1**

After "the surface owner", insert ". 1. The".

Delete ", which".

**Line 3**

After "of general circulation.", insert "2.".

**Lines 4 and 5**

After "shall be included", insert "with the operator's".

Delete the following:

when the operator files his

**Page 5**

**Sections 3(2) and 3(2)(a)**

**Lines 5 and 6**

After "and shall include:", insert "a.".

Delete "(a)".

**Page 5**

**Section 3(2)(a) and (b)**

**Lines 6 and 7**

After "of the operator;", insert "b.".

Delete "(b)".

**Page 5**

**Section 3(2)(b)**

**Line 7**

After "intended activity as", insert "established".

Delete "set out".

**Page 5**

**Section 3(2)(b) through (d)**

**Lines 8 through 11**

After "plan;", insert "and c.".

Delete paragraph (c) in its entirety and delete the notation, "(d)".

**Page 5**

**Section 3(2)(d)**

**Line 12**

After "operator's intended activity.", insert the following:

3. The surface owner shall respond to the notice established in this paragraph.

**Page 5**

**Section 4(1)**

**Line 14**

After "for mediation", delete "at any time".

After "after", insert "receiving".

Delete "he has received".

**Page 5**

**Section 4(2)**

**Lines 20 and 21**

After "mediation fee shall", insert "include".

Delete "set forth".

**Page 6**

**Section 4(2)(b)2.**

**Line 4**

After "penalties for perjury", insert "establishing: a.".

Delete ", setting forth".

Capitalize the first letter of "the".

**Lines 4 and 5**

After "applicant's individual income", insert "": b.".

Delete the comma.  
Capitalize the first letter of "the".

**Line 5**

After "applicant's household income", insert "c.".  
Delete the comma.  
Capitalize the first letter of "property".  
After "owned", insert "d.".  
Delete the comma.  
Capitalize the first letter of "outstanding".  
After "obligations", insert "e.".  
Delete the comma.  
Capitalize the first letter of "the".

**Line 6**

After "age of dependents", insert "and f.".  
Delete ", and".  
Capitalize "a".  
After "copy of his", insert "or her".

**Page 6**

**Section 4(3)**

**Line 7**

After "(3) Waiver determination.", insert "(a)".

**Lines 12 and 13**

After "subsection (4) of this section.", insert "(b)".  
After "mediator's waiver determination", insert "shall not be".  
Delete "is not".  
After "subject to appeal.", insert "(c)".

**Line 15**

After "Guidelines in effect", insert "upon".  
Delete "at the time".  
After "the", insert "date the".

**Lines 15 and 16**

After "is mailed.", insert "(d)".

**Line 17**

After "Federal Poverty Guidelines.", insert "(e)1.".

**Lines 17 and 18**

After "The mediator", insert "shall".  
Delete "has the discretion to".

**Line 20**

After "pay the fee.", insert "2. It shall".  
Delete "It may".  
After "the surface owner", insert "a.".  
Capitalize the first letter of "has".

**Line 22**

After "public assistance payments", insert "upon the date".  
Delete "at the time".

After "is submitted; or", insert "b.".  
Capitalize the first letter of "owns".

**Page 7**

**Section 4(4)**

**Line 1**

After "does not file", insert "the".  
Delete "his".

**Line 2**

After "Request for Mediation,", insert "the surface owner".  
Delete "he".

**Line 3**

After "applicable to mediation", insert a period.  
Delete the comma.  
Capitalize the first letter of "the".

**Page 7**

**Section 4(5)**

**Line 5**

After "(5)", insert "(a)".

**Lines 5 and 6**

After "any determinations regarding", insert "damage claims".  
Delete "them".

**Line 6**

After "in", insert "the".  
Delete "his".  
After "report.", insert "(b)".  
Delete "However,".  
Capitalize the first letter of "information".

**Line 8**

After "of roads, pits", insert a comma.

**Line 9**

After "in a manner", insert "that".  
Delete "which".

**Page 7**

**Section 4(6)**

**Line 10**

After "operator withdraws his", insert "or her".

**Page 7**

**Section 5(2)**

**Line 17**

After "activities shall incorporate", insert "BMPs".  
Delete "best management practices".

**Line 18**

After "all disturbed areas.", insert "(a)".

**Line 19**

After "fill material utilized.", insert "(b) A wellsite".

Delete "Wellsites".

After "a stable base.", insert "(c) If".

Delete "Where".

**Line 20**

After "practicable", insert a comma.

**Pages 7 and 8**

**Sections 5(2) and 5(2)(a)**

**Lines 21 and 1**

After "Section 9(5)(a).", insert "1. A disturbed area".

Delete "(a) All disturbed areas".

**Page 8**

**Section 5(2)(a) and (b)**

**Lines 3 and 4**

After "and reclamation plan.", insert "2. If".

Delete "(b) Where".

**Page 8**

**Section 5(2)(b)**

**Line 4**

After "practicable", insert a comma.

**Page 8**

**Section 5(2)(b) and (c)**

**Lines 5 and 6**

After "redistribution during reclamation.", insert "3.".

Delete "(c)".

**Page 8**

**Section 5(3)(a)**

**Line 15**

After "manner as to", insert "": 1.".

Capitalize the first letter of "allow".

**Line 16**

After "the cut slopes", insert "": and 2.".

Delete ", and".

Capitalize the first letter of "provide".

After "that maintenance", insert "shall be".

**Page 8**

**Section 5(3)(b)**

**Line 18**

After "(b)", insert "1.".

After "the well site", insert a comma.

**Line 19**

After "in a manner", insert "that shall prevent".

Delete "which prevents".

**Line 20**

After "operations, and buildings", insert "; and 2.".

Delete ", and".

Capitalize the first letter of "establish" and delete "that".

**Line 21**

After "and reclamation plan;", insert "and".

**Page 8**

**Section 5(3)(c)**

**Line 22**

After "(c)", insert "1.".

**Pages 8 and 9**

**Section 5(3)(c)**

**Lines 23 and 1**

After "damage has occurred", insert ". 2.".

Delete "; however,".

Capitalize the first letter of "the".

**Page 9**

**Section 5(3)(c)**

**Line 2**

After "the drilling, construction", insert a comma.

**Page 9**

**Section 6(1)(b)**

**Line 5**

After "of the department;", delete "and".

**Page 9**

**Section 6(1)(c)**

**Line 8**

After "reclamation plan", insert the following:

; and

(d) The cabinet has verified that the reclamation work complies with the operations and reclamation plan in the approved permit package

Delete the following:

has been approved by the cabinet

**Page 9**

**Section 6(2)**

**Lines 10 and 11**

After "division inspector has", insert ": (a)".

Capitalize the first letter of "made".

**Line 12**

After "reclamation and plugging, insert "; and (b)".

Delete "and has".

Capitalize the first letter of "filed".

**Page 9**

**Section 6(2)(a) through (c)**

**Lines 14, 16, and 17**

Renumber paragraphs (a) through (c) as subparagraphs 1. through 3., respectively.

**Page 9**

**Section 6(2)(c)**

**Line 17**

After "inadequate vegetative cover", insert a comma.

**Page 9**

**Section 7(1)**

**Lines 19 and 20**

After "transferring a well", delete the following:  
located on a severed minerals tract and

**Page 9**

**Section 7(1)(a)**

**Line 23**

After "division before signing", delete "Form ED-13,".

After "Well Transfer", insert "Form ED-13".

Delete the closing quotation mark.

**Page 10**

**Section 7(1)(c)**



**Line 3**

After "a letter indicating", insert "that the operator".  
Delete "he".

**Line 4**

After "and that he", insert "or she".

**Page 10**

**Section 7(1)(d)**

**Line 6**

After "the division the", insert "completed".

Delete "executed".

**Line 7**

After "in the manner", insert "established".

Delete "set forth".

**Page 10**

**Section 7(1)(e)**

**Line 9**

After "of form ED-13", insert "upon submission".

Delete "when he submits it".

**Page 10**

**Section 7(2)**

**Line 12**

After "operators in writing", insert "upon transfer of".

Delete "when".

After "the well", delete "is transferred".

**Page 10**

**Section 7(3)**

**Line 13**

After "(3)", insert "(a)".

After "assume all obligations", insert "in accordance with".

Delete "under".

**Line 15**

After "the transferor's obligations", insert "in accordance with".

Delete "under".

**Line 16**

After "the permit and", insert the following:

805 KAR Chapter 1.

(b)

Delete "this chapter".

**Line 17**

After "obligations", insert "in accordance with".

Delete "under".

After "the permit or", insert "805 KAR Chapter 1".

Delete "this chapter".

**Page 10**

**Section 8**

**Line 19**

After "Section 8.", insert "(1)".

**Line 21**

After "and reclamation plan.", insert "(2)".

**Line 22**

After "shall be submitted", insert "with".

Delete the following:

at the time of filing

**Page 11**

**Section 9(3)**

**Line 7**

After "correct a violation", insert the following:

. A request for an extension of time shall be submitted via

Delete "by submitting".

**Line 8**

After "for that extension", insert a period.

Delete the semicolon.

Capitalize the first letter of "if".

**Lines 8 and 9**

After "concludes that the", insert the following:

reasons for the request are beyond the operator's control

Delete "request is reasonable".

**Line 10**

After "or applicable statutes,", insert "the director shall".

Delete "he may".

**Page 11**

**Section 9(4)**

**Line 11**

After "The operator's bond", insert "shall".

Delete "may".

**Line 12**

After "KRS 353.590(10), if", insert "the operator".

Delete "he".

**Page 11**

**Section 9(5)**

**Line 15**

After "and reclamation plan,", insert "shall be".

Delete "is".